



CITY OF FULLERTON

Engineering Department

January 20, 2009

Gerard Thibault
Executive Officer
California Regional Water Quality Control Board, Santa Ana Region
3737 Main Street, Suite 500
Riverside, CA 92501-3348



Subject: Comment Letter – Draft Order No. R8-2008-0030 NPDES No. CAS618030

Dear Mr. Thibault:

The City of Fullerton is in receipt of the November 10, 2008, *Waste Discharge Requirements for the County of Orange, Orange County Resources and Development Management Department and the Incorporated Cities of Orange County Within the Santa Ana Region Areawide Urban Storm Water Runoff Orange County* (Draft Order No. R8-2008-0030). The City of Fullerton, as a Co-Permittee, welcomes the opportunity to provide comments on the Regional Water Quality Control Board's (RWQCB) Draft Order as prepared and distributed by Regional Board staff.

The Orange County Stormwater Program (the "Orange County Program" or "Program") has been in existence under a National Pollutant Discharge Elimination System (NPDES) permit since 1990. This permit was re-issued in 1996 and 2002. In 2006, the Co-Permittees submitted a Report of Waste Discharge (ROWD) in anticipation of permit renewal in 2007. The basis of this document was a comprehensive program assessment undertaken using a multiple lines of evidence approach, including audit findings, facilitated workshops, and the California Stormwater Quality Association (CASQA) Program Effectiveness Guidance. The ROWD identified many positive program outcomes and, where the assessments indicated the need for improvement, proposed changes and added program development commitments to the Drainage Area Management Plan (DAMP).

In the ROWD and proposed 2007 DAMP, the City of Fullerton committed to enhancing program implementation, developing BMPs for identified Countywide water quality constituents of concern, and establishing a watershed-based approach to water quality planning and protection to complement the Countywide management effort. While the draft Tentative Order is clearly responsive to the recommendations made in the ROWD, the City is concerned regarding proposed new requirements intended to increase the City's accountability, extend the City's regulatory reach, incorporate additional TMDLs, and create a new basis for the land development requirements of the Order. This concern is now being significantly amplified by the worsening condition of the economy.

GENERAL COMMENTS

I. Increasing Administrative Burden

At the inception of the Program the County of Orange, as Principal Permittee, and the 26 Co-Permittees developed a DAMP to serve as the principal policy and programmatic guidance document for the Program. Since 1993, the DAMP has been modified through an adaptive



management process to reflect the needs of the Co-Permittees, ensure Co-Permittee accountability, and deliver positive water quality and environmental outcomes. The DAMP now provides definitive guidance to the City of Fullerton and each Co-Permittee in the development of each jurisdiction's respective Local Implementation Plan (LIP), which specifically describes how the Program will be implemented on a city/jurisdiction basis. Concurrently, the annual progress report has been developed into a rigorous systematic assessment of program effectiveness that is conducted at jurisdictional, watershed, and countywide levels of resolution, using CASQA program effectiveness assessment guidance, and with identified headline measures of programmatic performance. The Draft Tentative Order requires additional reporting to the Regional Board staff. The City believes that adjusting the existing reporting processes, rather than creating additional reporting requirements, is the most effective approach to increasing transparency and accountability. Such an approach also offers the additional potential benefit of identifying opportunities to reduce rather than increase the administrative burden of the Program for both the RWQCB and for the Co-Permittees.

II. Extending the Regulatory Reach of Local Jurisdictions

In the most recent Annual Report the City noted that 498 industrial and commercial facilities in the City of Fullerton were subject to inspection for compliance with the water quality ordinance. Nonetheless, the Draft Tentative Order includes new requirements that significantly increase the universe of commercial facilities subject to inspection, mandates the annual inspection of treatment controls in completed land development and re-development projects, and more prescriptively turns the attention of the City toward residences and mobile businesses. The overarching concerns here are the significant resource implication for the City and the absence of technical justifications.

The Co-Permittees, in the detailed program assessment that preceded the ROWD, did not discern a rationale for a more inclusive inspection of commercial enterprise, nor is one presented in the Findings of the Tentative Order. With land development projects, the installation and subsequent maintenance of treatment controls certainly needs to be verified. However, self certification is already a verification mechanism being used by Co-Permittees and it and other third party verification mechanisms should not be precluded by the Order in exclusive favor of Co-Permittee inspection. The current opportunity to strategically re-consider the use of inspection resources should be used to target and focus these activities rather than simply expand their scope. Furthermore, given the current state of the economy, the City, like all municipalities, is facing shrinking budgets and the Regional Board should give great weight to the best use of limited resources in achieving water quality objectives.

The prescribed creation of a residential program also needs to be carefully considered. The effectiveness of Project Pollution Prevention, the public education and outreach initiative of the Program, has been validated by public opinion surveys that show incremental, but also statistically significant, increases in public awareness of stormwater issues and positive changes in protective behaviors. The new residential program requirements therefore appear duplicative of the current public education and outreach obligations that have already produced, and continue to yield, positive measurable outcomes. However, there is also a separate concern that prescribed efforts to "require residents to implement pollution prevention measures" (XI. 2) will be counter-productive and quickly erode general public support for the Program. The justification for this additional program when current requirements have produced positive outcomes needs to be provided to the Co-Permittees in the Draft Tentative Order.

The last area of prescribed new regulatory oversight is mobile businesses. The Co-Permittees have already produced educational materials for these businesses, cooperatively developed wash water disposal options with Orange County's sewer agencies, and coordinated on enforcement. The further required regulation of these businesses is a potentially resource intensive undertaking that currently appears to lack a strong technical rationale.

III. Creating a New Basis for the Land Development Requirements of the Order.

The Model Water Quality Management Plan prepared for the Third Term Permit explicitly recognizes the channel stability implications of watershed urbanization and provides for this potential impact to be addressed as a hydrologic condition of concern. The commitment made in the ROWD was to adjust the Model WQMP based on work being undertaken on this issue by the Southern California Coastal Water Research Project which is still pending. Since that time, an Effective Impervious Area of 5% or less has appeared as a performance standard for land development in the Draft Ventura Permit and in the Draft Tentative Order. This new requirement for land development is inappropriately establishing a watershed assessment metric as a site specific performance standard. It is also establishing an unreliable surrogate for flow reduction (see case study discussion in Attachment B of County of Orange Comment Letter, January, 2009) as the basis for conformance with the stormwater mandate. The City believes that although this standard may be appropriate in regions where there is the potential of large new developments, the Santa Ana region, specifically the City of Fullerton, is an urbanized area that has little new development, but rather significant in-fill or redevelopment projects. These areas are subject to various development standards that encourage high-density development and a 5% or less effective impervious area may not be feasible or appropriate in certain situations. The City believes there is no compelling technical justification that can be made for this requirement and would instead look to the original ROWD commitment regarding land development as the starting point for considering any adjustment to the existing land development element of the Program. The City also suggests that many of the various other approaches that provide proven results in reducing flow be considered as part of this Draft Tentative Order.

IV. Using Available Programmatic Performance and Environmental Quality Data

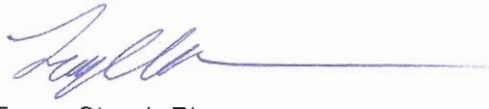
In advance of preparing the ROWD the Co-Permittees undertook a detailed program assessment drawing upon prior annual report findings, a comprehensive environmental quality database, audit findings, facilitated workshops, and the California Stormwater Quality Association (CASQA) Program Effectiveness Guidance. This assessment provided a strong technical basis for the further improvements to the Program recommended in the ROWD and which have been subsequently validated in later annual progress reports. These informational resources and, in particular, the environmental quality database, have been compiled at great expense and provide unique and site specific information on the state of Orange County's surface waters and the performance of the Orange County Stormwater Program. To the extent that the Draft Tentative Order prescribes requirements supplemental to the ROWD recommendations, they need to be explicitly supported by a strong technical justification that is developed from the information that has been compiled over the last 18 years by the Co-Permittees. New requirements also need to be consistent with the federal stormwater regulations and within the scope of the Clean Water Act. The Draft Tentative Order has attempted to step outside the scope of the authority provided by the Clean Water Act by including the regulation of non-point sources. The City believes that these sections of the Draft Tentative Order should be revised to be in compliance with the appropriate federal laws.

In addition to these comments, the City supports the County of Orange, Public Works – Environmental Resources comment letter (January, 2009). The County's letter provides comments that are relevant to all Co-Permittees and some similar concerns, directly affecting the City of Fullerton, are addressed in this comment letter.

We appreciate the effort that you and the Regional Board staff have devoted to the development of the fourth term permit for the Orange County Stormwater Program. We look forward to meeting with you and the staff to quickly resolve the City's concerns regarding the Draft Tentative Order to ensure that it meets our mutual goals.

Thank you for your attention to our comments. Please direct any questions to Trung Chanh Phan 714-738-5333.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Trung Chanh Phan', followed by a horizontal line extending to the right.

Trung Chanh Phan
Stormwater/Wastewater Compliance Specialist

cc: COF NPDES Program Leads, OC - RB

File: OC Co-Permittee Program